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Message Text

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ACTION IO-13

INFO OCT-01 EUR-12 ISO-00 IOE-00 H-02 HEW-06 AGRE-00
AID-05 MED-03 DEAE-00 CIAE-00 INR-07 JUSE-00
NSAE-00 SNM-02 TRSE-00 USIA-15 NSC-05 OES-06
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TO SECSTATE WASHDC PRIORITY 9396
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E.O. 11652: N/A
TAGS: SNAR
SUBJECT: CONGRESSIONAL HEARINGS ON DECRIMINALIZATION OF MARIHUANA

REF: STATE 57902

1. QUESTIONS RAISED IN REFTEL FIND NO SIMPLE, CLEAR-CUT ANSWERS UNDER SPANISH LEGAL SYSTEM. FIRST, SPANISH PENAL CODE LUMPS ALL "TOXIC DRUGS AND STUPEFACIENTS," INCLUDING MARIHUANA, TOGETHER IN ONE ARTICLE (SPANISH ADHERE TO LIST OF "STUPEFACIENTS" IN ANNEX TO 1961 SINGLE CONVENTION, WHICH INCLUDES CANNABIS). SECOND, COMMON FORM OF "MARIHUANA" ENCOUNTERED IN US GENERALLY DOES NOT EXIST IN SPAIN. NEAREST THING TO "MARIHUANA" IN SPANISH EXPERIENCE IS "HASHISH," USUALLY FROM MOROCCO. ACCORDING TO ONE REPORT (DEA SERIES IG-IB74-103), MOST MARIHUANA FOUND IN US CONTAINS 0.5 TO 2.0 PERCENT TETRAHYDROCANNABINO (THC), COMPARED TO "ABOUT 10 PERCENT THC" IN HASHISH AND 20 TO 65 PERCENT IN LIQUID HASHISH.

2. BASIC PROVISION OF SPANISH PENAL CODE ON DRUGS IS ARTICLE 34, WHICH STATES: "THOSE WHO ILLEGALLY EXECUTE ACTS OF CULTIVATION, FABRICATION, ELABORATION, TRANSPORT,
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POSSESSION, SALE, DONATION OR TRAFFIC IN GENERAL, OF TOXIC DRUGS OR STUPEFACIENTS OR IN OTHER WAYS PROMOTE, COUNTENANCE OR FACILITATE THEIR USE, SHALL BE PUNISHED WITH THE PENALTIES OF MAJOR IMPRISONMENT AND FINE OF 10,000 TO 50,000 PESETAS (ABOUT 150-750 US DOLLARS)." ALTHOUGH "MAJOR IMPRISONMENT" DEFINED GENERALLY AS SIX TO TWELVE YEARS, SPANISH OFFICIALS INFORMED EMBASSY THAT

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JUDGES CAN, IN FACT, VARY SENTENCES FROM SIX MONTHS UP
TO TWENTY YEARS, USING MITIGATING CIRCUMSTANCES PROVISION
OF ARTICLE 344.

3. ILLEGAL POSSESSION OF CONTROLLED DRUGS FOR PERSONAL
USE (WHERE TRAFFICKING IS NOT SHOWN OR ALLEGED) IS NOT
SPECIFICALLY ADDRESSED UNDER SPANISH PENAL CODE. HOWEVER,
IT IS A SITUATION TREATED UNDER THE "LAW OF SOCIAL DANGER
AND REHABILITATION" (LAW 16/1970, AUGUST 4). FURTHER,
SINCE PENAL CODE REFERS SIMPLY TO "POSSESSION," WITHOUT
REFERENCE TO PURPOSE, A USER COULD BE SENTENCED UNDER
THAT CODE. UNDER THIS REHABILITATION LAW A DRUG USER CAN BE FOUND
TO BE IN A STATE OF DANGER AND RECEIVE A SENTENCE WHICH IS
INTENDED TO CURE AND REEDUCATE THE USER AND RESCUE HIM
FROM DANGER. JUDGES HAVE BROAD DISCRETION UNDER THIS LAW
AND CAN IMPOSE SENTENCES RANGING FROM PROBATION
TO CONFINEMENT IN A PRISON TYPE HOSPITAE YEARS. AS WITH PENAL CODE NO
DISTINCTION IS DRAWN AS TO TYPE OF DRUG INVOLVED. HOWEVER,
JUDGES GENERALLY CONSIDER THIS WITH OTHER CIRCUMSTANCES
OF SPECIFIC CASE WHEN SETTING SENTENCE.

4. IN ADDITION TO APPLICATION OF PENAL CODE AND/OR
REHABILITATION LAWS, DRUG TRAFFICKERS ALSO ARE SUBJECT
TO "LAW OF CONTRABAND," WHICH PROVIDES FOR CONFISCATION
OF PERSONAL PROPERTY (VEHICLES, ETC.) INVOLVED AND FINES
OF FROM ONE TO SIX TIMES VALUE OF CONTRABAND DRUGS.
ARTICLE 340 OF PENAL CODE ALSO PROVIDES FOR FINES
OF 5,000 TO 50,0000 PESETAS (ABOUT 75-750 US DOLLARS)
AND SUSPENSION OF DRIVERS LICENSES FOR 3 MONTHS TO FIVE
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YEARS FOR "DRIVING MOTOR VEHICLE UNDER INFLUENCE OF
ALCHOLIC BEVERAGES, TOXIC DRUGS OR STUPEFACIENTS."

5. SPANISH POLICE OFFICIALS STATE THAT, IN PRACTICE,
THERE IS GREAT VARIATION AMONG SENTENCES IMPOSED BY
JUDGES, BOTH UNDER PENAL CODE AND REHABILITATION LAW.
FOLLOWING EXAMPLES OF SENTENCES BY JUDGES DURING RECENT
YEARS PROVIDE IDEA OF RANGE: 1976-AMERICAN GIVEN 10-YEAR
SENTENCE AND $1500 FINE FOR POSSESSION 111 KILOGRAMS OF
HASHISH; 1975-THREE MOROCCANS BETWEEN AGES 30 AND 63
YEARS SENTENCED TO 7 YEARS FOR POSSESSION 200 KILOGRAMS
HASHISH; 1975-SPANIARD (BARCELONA) GIVEN EIGHT YEAR
SENTENCE FOR POSSESSION TWO KILOGRAMS HASHISH;
1975-SPANIARD (SEVILLE) GIVEN SIX MONTH SENTENCE
FOR POSSESSION OF TWO KILOGRAMS HASHISH. EATON

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